IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

THURSDAY, THE 24TH MAY 2007 / 3RD JYAISHTA 1929

MFA.No. 816 of 1995(A)

(AGAINST THE AWARD DATED 6/08/1994 IN OPMV.424/1990 of MOTOR ACCIDENT CLAIMS TRIBUNAL, PERUMBAVOOR)
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APPELLANT: CLAIMANT:

S.PAREED, AGED 24, S/O.SULAIMAN,
CHERUVALLIKUDY HOUSE, KANJIRAKKADU,
RAYONPURAM P.O., PERUMBAVOOR.

BY ADV. SRI.K.A.SHAMSUDEEN
SRI.C.K.ABDUL RAHIM

RESPONDENTS:
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1. **N.D.CHITHRA BHANU, S/O.PADMANABHA PANICKER, NEDEENJAYAM HOUSE, PADINJAREKKARA, VAIKOM.**

2. **SALIM, S/O.MUHAMMED, KUZHIKKANDAM HOUSE, THALAYOLAPPARAMBU, VADAYAR VILLAGE.**

3. **THE NEW INDIA ASSURANCE CO.LTD., COCHIN – 15.**

BY ADV. SRI.P.V.R.KAIMAL
SRI.VPK.PANICKER

THIS MISC. FIRST APPEAL HAVING COME UP FOR ADMISSION ON 24/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. KOSHY and K.P.BALACHANDRAN, JJ.

M.F.A.No.816 of 1995

Dated this the 24th day of May, 2007

Judgment

Koshy, J.

Appellant is the claimant in O.P. (MV) No.424 of 1990 on the file of the Motor Accidents Claims Tribunal, Perumbavoor. The accident in which the appellant sustained injury occurred on 18.2.1990 at about 4.00 p.m. at a place called Kalampadam on Aluva-Munnar road. The accident occurred while the claimant was riding on a scooter bearing registration No.KER 5704 with one Shri Aliyar on his pillion. At the spot of accident, a bus bearing registration No.KLO 7045 hit on the scooter. Respondents are the registered owner, driver and insurer of the bus respectively. For the injuries sustained, appellant claimed Rs.3,92,400/-. Total compensation granted was only Rs.1,14,047/-. Tribunal found that the accident occurred due to the negligence of the driver of the vehicle insured by the third respondent. Only quantum of compensation is disputed in this appeal.

2. Main dispute is regarding the quantum of compensation granted for loss of earning capacity and disability. Ext.A6 is the wound certificate. In Ext.A7 (2) medical certificate it is stated as follows:

> "This is to certify that Mr.Pareed, 23 years, H/322939, S/o. Sulaiman, Chervallykudy, Rayonpuram, Perumbavoor, was admitted to this hospital on 18.2.1990 following a traffic accident. He had to following injuries:
>
> 1. Cerebral contusion - semi conscious, restless.
> 2. Bleeding (L) ear.
> 3. Fracture clavicle (L).
> 4. Multiple abrasions.
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> X-ray skull - fracture (L) temporal. C.T. scan. Extra-dural haematoma (L) temporal, operated and clot evacuvated. There was sub-dural collection which was also removed. He was in altered sensorium for over two weeks. He had pus collection in the wound which was removed and discharged on 25.3.1990. Subsequently, he was admitted on (II) 18.6.90 - 19.6.90 for ear discharge, left side. (III) 23.7.90 - 27.7.90 - cleaning of (L) ear under anaesthasia (IV) 20.8.90 - 22.8.90 ENT. He is coming for regular follow up. He is taking prophylacties, anti-convulsants - to

> be contined for two years. Persistent (L) ear discharge - and ENT follow ;up. Loss of recent and immediate memory. He has persistent head ache and giddiness. He has alternation in behaviour with temper."

Medical certificate shows that he was continuing under treatment for four years. Tribunal found as follows:

> "It is also clear from Ext.A7 series that from the date of accident, i.e., 18.2.90 to 30.5.1994 the petitioner was continuously under treatment for the injuries sustained to his brain and left ear."

Tribunal fixed 20% disability on the following manner:

> "In Ext.A7 (a) discharge certificate issued by one Dr.Koshi Jacob it is stated that due to the fracture of the left clavicle the movements of the left shoulder of the petitioner are restricted and there is a permanent disability of 10%. Ext.A7 (8) Medical certificate issued by the ENT specialist of the Medical Trust Hospital shows that the petitioner was under his treatment for four years for the post traumatic perforation of his left ear drum with hearing loss and he was advised to undergo surgery in April 1994. Ext.A7 (9) medical certificate issued by the same doctor shows that the petitioner underwent

surgery for reconstruction of the traumatic perforation of the left ear drum on 26.5.94. PW1 has stated that with that operation the discharge from his left ear was stopped, but, the hearing loss still persists. He has also deposed that at present he is having head ache, giddiness and hearing loss of the left ear. As already stated by me, the petitioner sustained brain injury. The extra-dural haematoma at the left temporal area was evacuvated by operation and he was put on anticonvulsants. But, there is no medical evidence to show that the aforesaid brain injury has resulted in any permanent disability to the petitioner. So also, as far as the hearing loss of the left ear, the petitioner is having as a result of the accident has not been certified by the ENT Surgeon either in Ext.A7 (8) or A7 (9) as a permanent lost. Since in Ext.A7 (9) it is stated that perforated ear drum of the left ear was reconstructed there is every possibility of the petitioner regaining hearing capacity. However, there may be some diminution in the hearing capacity. Taking into account all these circumstances, such as the injury to the brain, perforation of the left ear drum and the fracture of the left clavicle, I am of the view that the petitioner might have sustained a total

permanent disability of 20%."

Considering the discussion, even though assessment of disability at 20% is on the lower side, there are no grounds to interfere in the same in an appeal.

3. Appellant was aged 24 at the time of accident. As per second schedule, apt multiplier is 17. He was at the prime age of his life. According to the appellant, he was a businessman conducting Timber business under the name and style 'Yespee Timber traders' at Perumbavoor. Ext.A9 certificate of registration under the Sales-tax Act shows that the appellant was conducting such a business. This was also found by the tribunal. However, his claim that he was getting an amount of Rs.1,700/- per month was not accepted by the tribunal as accounts were not produced. Tribunal fixed the same as Rs.800/-. We are of the opinion that it is too low. Even the notional income of a non-earning person is fixed as Rs.15,000/- per year as per second schedule. Here, in the case of a young businessman, future prospects also has to be taken into account. In any event, notional income of Rs.15,000/- per year has to be taken in this case. If so, for 20% disability,

compensation payable will be 15,000 x 20 x 17 = Rs.51000.
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Tribunal has awarded only Rs.30,720/-. Hence, additional compensation payable under this count will be Rs.51,000 minus Rs.30,720 = Rs.20,280 for disability and loss of earning power.

4. Tribunal found that appellant was under treatment for four and a half years. From Ext.A7 series of medical certificates it is very clear that the appellant was admitted in the hospital on more than five occasions and that he continued treatment as out patient for more than four years. According to the appellant, distance from his house to the hospital is 35 k.ms. Tribunal has allowed only Rs.1,000/- as transportation expenses against a claim of Rs.7,000/-. We are of the opinion that at least Rs.5,000/-ought to have been granted for transportation expenses. Hence, we grant an additional compensation of Rs.4,000/- for transportation expenses. For actual loss of earning for the period of treatment, no amount is awarded. Tribunal found that he was under treatment for four and a half years out of which two and a half months as an inpatient. During the period of outpatient treatment also, there is actual loss

of earning. It is true that during the period of outpatient treatment he could have done some work. We are of the opinion that Rs.10,000/- ought to have been granted for actual loss of earning during the period of treatment. Thus, appellant-claimant is entitled to an additional compensation of Rs.34,280/- over and above the decreed amount. Third respondent insurance company is directed to deposit the above amount with 9% interest from the date of application till deposit. Since the accident occurred in 1990, on the facts of the case, on deposit of the amount, appellant is allowed to withdraw the same.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

vaa

J.B. KOSHY AND
K.P.BALACHANDRAN, JJ.

M.F.A. NO.816/95

JUDGMENT

Dated:24th May, 2007